

DEPARTMENT OF STATE REVENUE

Revenue Ruling #99-04 IT

July 14, 1999

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

Gross Income Tax – Lease Income and Sales of Products

Authority: IC 6-2.1-2-2, Rule 45 IAC 1.1-1-3, Rule 45 IAC 1.1-3-3

The taxpayer requests the Department to rule on the application of gross income tax to lease income and sales of products. The taxpayer submitted the following issues in relation to this request.

1. Will the lease income received by the taxpayer be subject to Indiana gross income tax?
2. Will the sale of products by the taxpayer at manufacturing locations outside Indiana be considered an Indiana sale for the taxpayer under Indiana gross income tax provisions?

STATEMENT OF FACTS

The taxpayer manufactures refined oil products at refinery locations outside of Indiana. The taxpayer sells and delivers these products to an affiliated partnership (distributor), in which the taxpayer is a partner, at locations outside of Indiana. The distributor arranges for and pays a common carrier to have the product shipped to distribution/storage facilities in Indiana. Title to the product and risk of loss passes to the distributor at the taxpayer's manufacturing location. Contracts for the sale of the products are negotiated and controlled outside the State of Indiana. The products are sold at arm's length prices.

The distribution/storage facilities located in Indiana are owned by the taxpayer and leased to the distributor. The distributor is responsible for all operations in Indiana, including operation of the distribution/storage facilities. The taxpayer is domiciled in Oklahoma and its only contact with Indiana is its ownership of the distribution/storage facilities leased by the distributor.

ISSUE #1 – DISCUSSION

IC 6-2.1-2-2 provides that gross income tax is imposed upon the receipt of the taxable gross income derived from activities or businesses or any other sources within Indiana by a taxpayer who is not a resident or domiciliary of Indiana. Rule 45 IAC 1.1-1-3(b)(6) states that ownership, leasing, rental, or other business activities connected with income-producing property (real or personal) establishes a "business situs" in Indiana.

Here, the taxpayer has established a "business situs" in Indiana by virtue of owning and leasing the distribution/storage facilities, hence, the lease income received by the taxpayer falls within the ambit of IC 6-2.1-2-2 and is subject to Indiana gross income tax.

ISSUE #1 – RULING

The Department rules that the taxpayer has established a "business situs" in Indiana, hence, the lease income received by the taxpayer is subject to Indiana gross income tax.

ISSUE #2 – DISCUSSION

Rule 45 IAC 1.1-3-3 provides;

- (c) Gross income derived from the sale of tangible personal property in interstate commerce is not subject to the gross income tax if the sale is not completed in Indiana. The following examples are situations when a sale is not completed in Indiana prior to or after shipment in interstate commerce:
 - (5) A sale to an Indiana buyer by a nonresident with an in-state business situs or activities but the situs or activities are not significantly associated with the sale because it was initiated, negotiated, and serviced by out-of-state personnel, and the goods are shipped from out-of-state. The in-state business situs or activities will be considered significantly associated with the sale if the sale is initiated, negotiated, or serviced by in-state personnel.

In the instant case, the taxpayer has established a business situs in Indiana at the distribution/storage facilities. The business situs, however, is not significantly associated with the sales of products by the taxpayer to the distributor as the sales are initiated, negotiated, and serviced by out-of-state personnel, and the products are shipped from out-of-state. Accordingly, the sales of products by the taxpayer to the distributor are defined as sales not completed in Indiana, therefore, not subject to Indiana gross income tax.

ISSUE #2 – RULING

The Department rules that the sale of products by the taxpayer at manufacturing locations outside Indiana is not considered an Indiana sale for the taxpayer under Indiana gross income tax provisions.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in a statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

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